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BEFORE THE ARIZONA CORPORATION COMMISSION

2017 APR -6 P 4: 52

Arizona Corporation Commission

DOCKETED

APR 6 2017

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**COMMISSIONERS**

TOM FORESE- Chairman  
BOB BURNS  
DOUG LITTLE  
ANDY TOBIN  
BOYD DUNN

DOCKET NO. E-01345A-16-0036

IN THE MATTER OF THE APPLICATION  
OF ARIZONA PUBLIC SERVICE COMPANY  
FOR A HEARING TO DETERMINE THE  
FAIR VALUE OF THE UTILITY PROPERTY  
OF THE COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO DEVELOP  
SUCH RETURN.

DOCKET NO. E-01345A-16-0123

IN THE MATTER OF FUEL AND  
PURCHASED POWER PROCUREMENT  
AUDITS FOR ARIZONA PUBLIC SERVICE  
COMPANY.

**STIPULATED MOTION OF  
COMMISSION STAFF, THE  
RESIDENTIAL UTILITY CONSUMER  
OFFICE, ARIZONA PUBLIC SERVICE  
COMPANY AND THE SOLAR PARTIES  
FOR ENTRY OF A PROTECTIVE ORDER**

Arizona Public Service ("APS"), the Solar Parties,<sup>1</sup> the Arizona Corporation Commission Staff, and the Residential Utility Consumer Office ("RUCO") ("the Moving Parties") hereby stipulate to the entry of a Protective Order, in the form attached as Exhibit 1, to govern the treatment of the Joint Solar Cooperation Agreement ("JSCA"), as requested by APS, the Solar Parties, and certain other entities that are not Intervenor in this Docket.

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...

<sup>1</sup> Solar Parties include the Energy Freedom Coalition of America ("EFCA"), Vote Solar, the Arizona Solar Energy Industries Association ("AriSEIA"), the Solar Energy Industries Association ("SEIA"), and the Arizona Solar Deployment Alliance ("ASDA").

1 The Moving Parties respectfully request that the Hearing Division enter a Protective Order in  
2 the form attached to govern the treatment of the JSCA.

3 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of April, 2017.  
4

5 ARIZONA CORPORATION COMMISSION STAFF

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14 THE RESIDENTIAL UTILITY CONSUMER OFFICE

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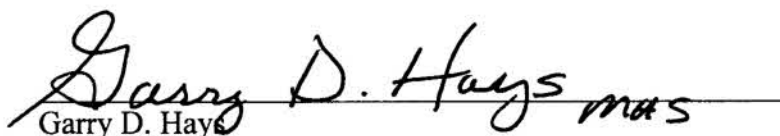
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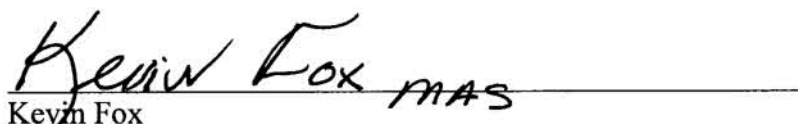
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On this 6th day of April, 2017, the foregoing document was filed with Docket Control as an Utilities Division Stipulation, and copies of the foregoing were mailed on behalf of the Utilities Division to the following who have not consented to email service. On this date or as soon as possible thereafter, the Commission's eDocket program will automatically email a link to the foregoing to the following who have consented to email service.

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By:   
Karyn Christine  
Executive Legal Assistant

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 TOM FORESE– Chairman  
4 BOB BURNS  
5 DOUG LITTLE  
6 ANDY TOBIN  
7 BOYD DUNN

8 IN THE MATTER OF THE APPLICATION OF  
9 ARIZONA PUBLIC SERVICE COMPANY  
10 FOR A HEARING TO DETERMINE THE  
11 FAIR VALUE OF THE UTILITY PROPERTY  
12 OF THE COMPANY FOR RATEMAKING  
13 PURPOSES, TO FIX A JUST AND  
14 REASONABLE RATE OF RETURN  
15 THEREON, TO APPROVE RATE  
16 SCHEDULES DESIGNED TO DEVELOP  
17 SUCH RETURN.

DOCKET NO. E-01345A-16-0036

13 IN THE MATTER OF FUEL AND  
14 PURCHASED POWER PROCUREMENT  
15 AUDITS FOR ARIZONA PUBLIC SERVICE  
16 COMPANY.

DOCKET NO. E-01345A-16-0123

**PROTECTIVE ORDER TO GOVERN THE  
TREATMENT OF THE JOINT SOLAR  
COOPERATION AGREEMENT**

17 The JSCA is a separate agreement between APS, the Solar Parties <sup>1</sup>, and certain other entities  
18 that are not Intervenor in this case. In general, the JSCA provides that its signatories will refrain  
19 from seeking to undermine the Settlement Agreement through ballot initiatives, legislation or  
20 advocacy at the Commission.

21 The signatories to the JSCA deem its contents to be highly confidential. The signatories to  
22 the JSCA represent that it contains provisions preventing the disclosure of the JSCA, or the contents  
23 thereof, to any person or entity except for an enumerated and limited group of persons who will be  
24 required to execute non-disclosure agreements prior to having access to the highly confidential  
25 document.

26  
27  
28 <sup>1</sup> Solar Parties include the Energy Freedom Coalition of America ("EFCA"), Vote Solar, the Arizona Solar Energy Industries Association ("AriSEIA"), the Solar Energy Industries Association ("SEIA"), and the Arizona Solar Deployment Alliance ("ASDA").



1 The Moving Parties expressly request that this Protective Order govern the terms and  
2 conditions, for purposes of this proceeding, of obtaining access to the JSCA and other matters  
3 relating to its treatment. The Commission Staff has requested that the members of the Arizona  
4 Corporation Commission (the "Commissioners") their policy advisors, and the presiding  
5 Administrative Law Judge (the "ALJ") be granted access to the JSCA, under normal Commission  
6 procedures governing confidential information. As the forum, the Commission is being requested to  
7 issue a Protective Order to govern the treatment of sensitive information, thereby eliminating the  
8 need for individual non-disclosure agreements. The Moving Parties therefore seek this Protective  
9 Order to eliminate the need for the Commissioners, their policy advisors, and the ALJ to execute the  
10 non-disclosure agreement that is part of the JSCA; and to set forth the terms and conditions of access  
11 to the JSCA for purposes of this proceeding.

12 While a general description of the JSCA has been disseminated publicly, as expressly  
13 permitted by the JSCA, certain signatories to the JSCA believe that it contains proprietary and non-  
14 public information and any additional disclosure of the terms of the JSCA would result in  
15 particularized harm to them. Therefore, they desire to limit access to the JSCA in this proceeding to  
16 certain specifically enumerated individuals.

17 In order to expedite the exchange of information between the Commission Staff, RUCO,  
18 APS, and the Solar Parties (collectively "the Parties"), and the Commissioners, their policy advisors,  
19 and the ALJ, with respect to the JSCA and related confidential information in this case, the Parties  
20 respectfully request a Protective Order protecting the JSCA and the content thereof as follows:

21 1. **Confidential Information.** APS and the Solar Parties ("Providing Parties") have  
22 designated the JSCA, all of its contents, any notes, material referencing, deriving content from, or  
23 otherwise containing parts of the JSCA as highly confidential ("Highly Confidential Information").  
24 The Providing Parties agree to mark the JSCA as Highly Confidential Information by clearly  
25 designating or stamping it as "Highly Confidential" and placing it on colored paper to clearly indicate  
26 its confidential nature.

27 All notes or other materials that refer to, derive from, or otherwise contain parts of the  
28 Highly Confidential Information will also be considered Highly Confidential Information and will be

1 marked and color coded in the same manner. Access to and review of the Highly Confidential  
2 Information shall be strictly controlled by the terms of the Protective Order.

3       **2.     Use of Highly Confidential Information.** All persons who may be entitled to  
4 review, or who are afforded access to Highly Confidential Information by reason of the Protective  
5 Order, shall neither use, nor disclose the Highly Confidential Information for any business,  
6 commercial, or competitive purpose, or any other purpose other than the preparation for and conduct  
7 of proceedings in this Docket and all subsequent appeals, and shall keep the Highly Confidential  
8 Information secure as confidential or proprietary information and in accordance with the purposes,  
9 intent, and requirements of the Protective Order.

11       **3.     Persons Entitled to Review.** Each party who receives Highly Confidential  
12 Information pursuant to the Protective Order must limit access to such Highly Confidential  
13 Information to the persons specified in this section. Only the persons specified below shall be  
14 permitted to review Highly Confidential Information pursuant to the Protective Order, and the  
15 conditions under which review will be permitted are as follows:  
16

- 17           a. The original parties to the JSCA who have fully complied with and agreed to be  
18 bound by the terms thereof;
- 19           b. Members of Commission Staff who have previously executed Exhibit A (Non-  
20 Disclosure Agreement) to the Protective Order;
- 21           c. The Executive Director of the Residential Utility Consumers Office ("RUCO")  
22 and his legal counsel who have previously executed Exhibit A to the Protective  
23 Order;
- 24           d. The ALJ, who shall not be required to execute Exhibit A;
- 25           e. The Commissioners and their policy advisors who shall not be required to execute  
26 Exhibit A; and  
27  
28

1 f. Any court reporter, who has previously executed Exhibit A to the Protective  
2 Order.

3 Any dissemination of Highly Confidential Information beyond the persons set forth above is  
4 strictly prohibited and shall be a violation of the Protective Order. Nothing in the Protective Order is  
5 intended to modify the provisions of the JSCA as they pertain to the signatories to the JSCA to  
6 otherwise comply with any provisions of the JSCA. The Protective Order does not impact the JSCA  
7 signatories' ability to agree to share the JSCA with others outside the context of this proceeding.

8 4. **Nondisclosure Agreement.** Other than the Commissioners, their policy  
9 advisors, and the ALJ, any party, person, or entity specified in Section 3 above, who intends to  
10 receive Highly Confidential Information, shall execute the Non-Disclosure Agreement prior to  
11 receiving the Highly Confidential Information. All parties, persons, and entities who receive Highly  
12 Confidential Information pursuant to the Protective Order, regardless of whether such party, person,  
13 or entity has signed the Non-Disclosure Agreement, are bound by the Protective Order and shall not  
14 disclose such Highly Confidential Information to any person, except as provided herein. All Highly  
15 Confidential Information shall be filed under seal and subject to in camera inspection and  
16 examination only.

17 The Non-Disclosure Agreement, shall contain terms that require the person to read a copy of  
18 the Protective Order and to certify in writing that he/she consents to be bound by its terms. The Non-  
19 Disclosure Agreement shall contain the signatory's full name, employer, job title and job description,  
20 business address and the name of the party with whom the signatory is associated.

21 5. (a) **Notes.** Limited notes regarding Highly Confidential Information may be taken  
22 by those receiving Highly Confidential Information for the express purpose of preparing for  
23 participation in this proceeding. Such notes shall be treated as Highly Confidential Information for  
24 purposes of the Protective Order, and shall be destroyed after the conclusion of the proceedings in  
25 accordance with subsection 5(b).

26 (b) **Destruction.** All persons listed in Sections 3(b)-3(f) receiving Highly  
27 Confidential Information shall destroy all such Highly Confidential Information within thirty (30)  
28

1 days after the conclusion of the proceedings in this matter, including any appeals. The person  
2 destroying such Highly Confidential Information shall advise the party who provided the Highly  
3 Confidential Information of the fact of destruction within a reasonable time after the date of  
4 destruction.

5       **6.     Objections to Admissibility.** The furnishing of Highly Confidential Information  
6 pursuant to the Protective Order shall in no way limit the right of the Providing Party to object to its  
7 relevance or admissibility in proceedings before this Commission.

8       **7.     Requests by Third Parties for the JSCA in this Proceeding.** The Moving Parties  
9 agree that the Protective Order is intended to govern the provision of the JSCA by APS and the Solar  
10 Parties to the Commissioners, their policy advisors, the ALJ, Commission Staff, and RUCO. In the  
11 event that any other party to this Docket requests a copy of the JSCA; the Providing Parties shall have  
12 five (5) business days from the date the request is docketed to initiate a protective proceeding in this  
13 Docket. Upon expiration of five (5) business days from the date a written request is docketed, if a  
14 protective proceeding is not requested, the Highly Confidential Information shall be made available  
15 to the requesting party under seal (upon execution of Exhibit A) unless APS or any of the Solar  
16 Parties notify the Commission that they have resolved the issue with the Requesting Party.

17       In any requested protective proceeding, APS or any of the Solar Parties shall file a motion  
18 presenting the specific grounds upon which they claim the request for the Highly Confidential  
19 Information should be denied and why they believe the Highly Confidential Information should not  
20 be disclosed. Staff and the Requesting Party shall have an opportunity to respond to the motion. The  
21 motion by APS or any of the Solar Parties may be ruled upon by either the Commission or an  
22 assigned Commission ALJ.

23       APS or any of the Solar Parties may provide to the Commission or the ALJ, the Highly  
24 Confidential Information referenced in the motion without waiving any claim that the information  
25 should remain confidential under the terms of the Protective Order. Any Highly Confidential  
26 Information provided shall be kept under seal for the purpose of permitting inspection by the  
27 Commission or the ALJ prior to ruling on the motion. If the Commission or ALJ rules that the  
28

1 Highly Confidential Information should be released, APS and the Solar Parties shall be given five (5)  
2 business days prior to the actual release of the Highly Confidential Information to bring a Court  
3 action if they so desire to prevent its disclosure.

4       **8. Protective Proceedings to Prevent Disclosure to the Public.** APS and the Solar  
5 Parties are providing the JSCA under the condition of confidentiality. APS and the Solar Parties  
6 object to any public disclosure of the Highly Confidential Information. In the event the Commission  
7 receives any request for public disclosure of the Highly Confidential Information the Commission  
8 shall provide notice to the Providing Parties within five (5) days of receipt of that request. Based  
9 upon the provisions of this Protective Order, the request for public disclosure of any Highly  
10 Confidential Information will be denied, unless the Highly Confidential Information has already been  
11 publicly disclosed, or unless the Commission is legally compelled to disclose the confidential  
12 information.

13       In the event that the Commission becomes legally compelled (by public records request,  
14 deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar  
15 process) to disclose any Highly Confidential Information, the Commission shall provide the  
16 Providing Parties with prompt written notice of such requirement, in no event later than five (5) days  
17 from the date of knowledge of the requirement, so the Providing Parties may seek an appropriate  
18 remedy and/or waive compliance. The Providing Parties agree that upon receipt of such notice, they  
19 will either undertake to oppose disclosure of the Highly Confidential Information or waive  
20 compliance with the Protective Order. In the event that disclosure of Highly Confidential  
21 Information is ordered, the Commission agrees to furnish only that portion of the Highly Confidential  
22 Information that is legally required.

23       **9. Judicial Proceedings Related to Requests for Disclosure.** In the event a judicial  
24 proceeding is initiated against the Commission to obtain Highly Confidential Information, to the  
25 extent the Providing Parties are not specifically named in the action as real parties in interest, they  
26 agree to join in the action as co-defendants. APS also agrees to indemnify and hold the Commission  
27  
28



harmless from any assessment of expenses, attorneys' fees or damages under A.R.S. Section 39.121.02 or any other law up to \$150,000.00, to the extent assessed against the Commission.

10. (a) **Receipt Into Evidence.** Provision is hereby made for receipt of the JSCA into evidence in this proceeding, subject to the following conditions and all other conditions contained in the Protective Order:

(1) Only one (1) copy of the JSCA designated by the Providing Party to be placed in a sealed record shall be made.

(2) The copy of the JSCA to be placed in the sealed record shall be tendered by counsel for a Providing Party to the Commission, and maintained in accordance with the terms of the Protective Order.

(3) The JSCA shall not be filed in the Docket.

(b) **Seal.** While in the custody of the Commission, all Highly Confidential Information shall be marked "HIGHLY CONFIDENTIAL – UNDER PROTECTIVE ORDER" IN DOCKET NOS. E-001345A-16-0036 and E-01345A-16-0123, and shall not be examined by any person except under the conditions set forth in the Protective Order.

(c) **In Camera Hearing.** Highly Confidential Information may only be orally discussed, referenced, or disclosed by any party, the ALJ, the Commissioners or their policy advisors in an in-camera hearing attended only by persons authorized to have access to the Highly Confidential Information under Section 3 of this Agreement, who have already signed the NDA. Any record or transcript of such in-camera proceedings shall be sealed and treated in the same manner as if it were the JSCA itself.

(d) **Access to Record.** Access to sealed testimony, records, and information shall be limited to the ALJ, Commissioners, and their respective policy advisors, and persons who are entitled to review Highly Confidential Information pursuant to Subsection 3 above and have signed a NDA, unless such Highly Confidential Information is released from the restrictions of the Protective Order either through the consent of the Providing Parties or pursuant to the final order of a court having final jurisdiction.

1           (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in the  
2 proceedings may be forwarded to any court of competent jurisdiction for purposes of an appeal, but  
3 Highly Confidential Information and any references to it shall be submitted under seal as designated  
4 herein for the information and use of the court. If a portion of the record is forwarded to a court, the  
5 providing party shall be notified which portion of the sealed record has been designated by the  
6 appealing party as necessary to the record on appeal.

7           (f) **Return.** Unless otherwise ordered, Highly Confidential Information, including  
8 transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal,  
9 shall continue to be subject to the protective requirements of this Order, and shall, at the providing  
10 party's discretion, be returned to counsel for the providing party, or destroyed by the receiving party,  
11 within thirty (30) days after the entry of a non-appealable order. If the Providing Party elects to have  
12 Confidential Information destroyed rather than returned, counsel for the receiving party shall verify in  
13 writing that the material has in fact been destroyed.

14       12. **Use in Pleadings.** Where references to Highly Confidential Information in the sealed  
15 record or with the Providing Party is required in pleadings, briefs, arguments, or motions (except as  
16 provided in Section 6), it shall be by citation of title or exhibit number or some other description that  
17 will not disclose the substance of the Highly Confidential Information. Any use of or substantive  
18 references to Highly Confidential Information shall be placed in a separate section of the pleading or  
19 brief and submitted to the ALJ or the Commission under seal. This sealed section shall be served  
20 only on those persons who are permitted to view the JSCA as set forth in Subsection 3. All of the  
21 restrictions afforded by the Protective Order apply to materials prepared and distributed under this  
22 section.

23       13. **Agreement to Treat the JSCA as Highly Confidential Information for purposes of**  
24 **this Proceeding.** By agreeing to this Order, the Commission Staff and RUCO have agreed for  
25 purposes of this proceeding to treat the JSCA and related information as Highly Confidential. The  
26 Commission Staff and RUCO are not parties to the JSCA and thus can make no representation that  
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28

1 the JSCA is either in fact or as a matter of law, a trade secret or of a proprietary, confidential or  
2 legally protected nature.

3       **14. Breach of Order.** Any person who has received Highly Confidential Information  
4 pursuant to the terms of the Protective Order, in any legal action or complaint filed in any court  
5 alleging breach of the Protective Order, shall, at the written request of the Commission, name the  
6 Arizona Corporation Commission as a Defendant therein.

7       **15. Non-Termination.** The provisions of the Protective Order shall not terminate at the  
8 conclusion of this proceeding.

9       **Entered this 7<sup>th</sup> day of April, 2017.**

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12 Teena Jibilian  
13 Administrative Law Judge  
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EXHIBIT "A"

NON-DISCLOSURE AGREEMENT

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated April \_\_\_\_, 2017, *IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-0036; AND IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDIT FOR ARIZONA PUBLIC SERVICE COMPANY, Docket No. E-01345A-16-0123* and agree to be bound by the terms and conditions of such Agreement.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Position

\_\_\_\_\_  
Job Description

\_\_\_\_\_  
Date